S.B.CIVIL WRIT PETITION NO.1109/1995

Nakhat Singh
v.
State of Rajasthan & Anr.

DATE OF ORDER :: 7th February, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. B.D.Purohit, for the petitioner.
Mr. B.L.Tiwari, Deputy Government Advocate.

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The instant petition for writ is preferred to claim selection grades as prescribed by Government of Rajasthan under its notification dated 25.1.1992 by treating the date of initial appointment of the petitioner as 30.6.1970. The petitioner has also claimed for a direction for the respondents to make fixation of his pay in the pay scale of Rs.950-1680 under the Rajasthan Civil Services (Revised Pay Scales) Rules, 1989 and thereafter in corresponding pay scale of the subsequent revised pay scale rules.

In brief, facts of the case are that under an order dated 30.6.1970 passed by the Principal, Gram Sewak Training Centre, Mandore, the petitioner was employed as Pump Driver purely on temporary basis for a period of three months in the pay scale of Rs.100-180. In the order of appointment it was made clear that services of the petitioner shall be discontinued in the event of availability of surplus employees. Despite the fact that the appointment given under the

order dated 30.6.1970 was for a period of three months, the petitioner was allowed to continue in service, therefore, under an order dated 19.11.1985 the Principal, Gram Sewak Training Centre, Mandore declared the petitioner permanent on the post of Pump Assistant w.e.f. 1.4.1983. On abolition of post of Pump Assistant at Gram Sewak Training Centre, Mandore the petitioner was declared surplus and under an order dated 14.12.1992 issued by the Member Secretary, Absorption Committee-cum-Special Secretary to the Government of Rajasthan, Department of General Administration (Group-III) the petitioner was absorbed as Pump Operator Gr.II in the pay scale of Rs.910-1520 in the office of the Superintending Engineer, Public Health and Engineering Department, City Circle, Jodhpur. The petitioner by various representations claimed for grant of pay scale of Rs.950-1680 instead of pay scale of Rs.910-1520 as given to him under the order dated 14.12.1992. The petitioner also claimed for grant of selection grades in accordance with the notification dated 25.1.1992 issued by the Government of Rajasthan by treating 30.6.1970 as the date of his initial appointment. According to the petitioner no action was taken by the respondents on the representations, therefore, he approached this Court by way of filing the instant petition for writ.

In reply to the writ petition it is stated by the respondents that the petitioner joined duties in

Public Health and Engineering Department in pursuant to the order dated 14.12.1992, therefore, the term of service prior to it could not be taken into consideration for grant of selection grades. No specific reply is given with regard to claim made by the petitioner for fixation of his pay in the pay scale of Rs.950-1680.

Heard counsel for the parties.

It is emphasised by counsel for the petitioner that the petitioner entered in the services of the respondent State w.e.f. 30.6.1970 and, therefore, in light of the provisions of the notification dated 25.1.1992 issued by Government of Rajasthan the petitioner is entitled for getting selection grades on completion of 9 and 18 years of service w.e.f. 25.1.1992 itself and the third selection grade on completion of 27 years of service in the year 1997. It is asserted by counsel for the petitioner that the respondents erroneously treating 14.12.1992 as the date of his initial appointment, as a matter of fact on that day he was absorbed in the service of Public Health and Engineering Department. As stated above, in reply to the writ petition the respondents came forward with the stand that service tenure of the petitioner prior to 14.12.1992 could not be taken into consideration as prior to that the petitioner was not in Public Health and Engineering

Department but was at Gram Sewak Training Centre, Mandore.

Under the notification dated 25.1.1992 the Government of Rajasthan prescribed for grant of selection grades to its employees with a view to remove stagnation in service. The term of 9 years is considered by Government of Rajasthan as a term appropriate to receive next promotion. The petitioner prior to his absorption with Public Health and Engineering Department was serving at Gram Sewak Training Centre, Mandore in permanent capacity, therefore, he was entitled for getting a berth in seniority list by horizontal placement. His candidature for promotion was also required to be considered accordingly, therefore, the term of service with training centre is also required to be taken into consideration for grant of selection grades. Need not to say that the Gram Sewak Training Centre is also an office under the Government. As a matter of fact the issue that requires determination is with regard to date of initial appointment, meaning thereby, whether it should be 30.6.1970 or any other date subsequent thereto.

From perusal of the order dated 30.6.1970 it is manifest that the appointment was given to the petitioner as Pump Driver on temporary basis for a period of three months. The appointment given under

the order referred above was not at all a regular appointment but was only a stop gap arrangement. A right to get selection grades is available to a person appointed under the rules. The initial appointment of the petitioner under the order dated 30.6.1970 was not in accordance with the rules, therefore, 30.6.1970 cannot be treated as the date of initial appointment of the petitioner for the purpose of computing the term for grant of selection grades. The petitioner was declared permanent under an order dated 19.11.1985 passed by the Principal, Gram Sewak Training Centre, Mandore w.e.f. 1.4.1983 and, therefore, the petitioner acquired the status of a regular employee of Government of Rajasthan w.e.f. 1.4.1983, as such the 1.4.1983 can only be taken as a date of initial appointment of the petitioner in accordance with the rules. The service tenure of the petitioner, therefore, is required to be determined for grant of selection grades in accordance with the notification dated 25.1.1992 as 1.4.1983.

The another contention of counsel for the petitioner that the petitioner was entitled for fixation in the pay scale of Rs.950-1680 on revision of the pay scale of Rs.910-1520 pertaining to the post of Pump Operator Gr.II, is having no force as the pay scale of Rs.950-1680 is available to Pump Operators having I.T.I. certificate or who stood promoted to the post of Pump Operator Gr.II on completion of 15 years

of service on the lower post. It is not in dispute that the petitioner is neither having I.T.I. certificate nor he was promoted by holding the lower post for a term of 15 years. The fixation of the petitioner in the pay scale of Rs.910-1520, therefore, was rightly given under the order dated 14.12.1992 as i.e. prescribed under the relevant rules for the Pump Operators Gr.II who are not possessing the qualification required under the rules.

Accordingly, this petition for writ is allowed in part with a direction to the respondents to grant selection grades to the petitioner in accordance with the notification dated 25.1.1992 by treating 1.4.1983 as his date of initial appointment.

No order to costs.

(GOVIND MATHUR),J.

kkm/ps.